

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

AMANDA M. HAWLEY, individually on behalf of those similarly situated; ROBERT A. ROCKHOLD, individually on behalf of those similarly situated; JULIE M. BENNETTE, individually on behalf of those similarly situated,

Plaintiff,

v.

BUSINESS COMPUTER TRAINING INSTITUTE, INC., a Washington corporation doing business as Business Career Training Institute Inc.; BUSINESS COMPUTER TRAINING INSTITUTE COMMUNITY SERVICES, a Washington limited partnership; EDUCATIONAL MANAGEMENT AND FINANCING CORPORATION, a Washington corporation; MARKETING SUPPORT SERVICES AGENCY, INC., a Washington corporation; MORRIE PIGOTT and LINDA PIGOTT, individually and their marital community; TOM JONEZ and FAYE JONEZ, individually and their marital community,

Defendants.

CASE NO. C08-5055BHS

ORDER DENYING DEFENDANTS' MOTION TO DISMISS FOR FAILURE TO STATE CLAIMS AGAINST NON-CORPORATE DEFENDANTS TOM JONEZ, FAYE JONEZ, MORRIE PIGOTT, AND LINDA PIGOTT; GRANTING PLAINTIFFS' MOTION TO AMEND; AND RENOTING PLAINTIFFS' MOTION FOR CLASS CERTIFICATION

This matter comes before the Court on Defendants' Motion to Dismiss for Failure to State Claims against Non-Corporate Defendants Tom Jonez, Faye Jonez, Morrie Pigott,

1 and Linda Pigott (Dkt. 10), Plaintiffs' Motion to Amend (Dkt. 12), and Plaintiffs' Motion
2 for Class Certification (Dkt. 11). The Court has considered the pleadings filed in support
3 of and in opposition to the motions and the remainder of the file herein.

4 **I. FACTUAL AND PROCEDURAL BACKGROUND**

5 This matter was removed to federal court on January 30, 2008. Dkt. 1. Plaintiffs
6 bring this suit on behalf of former Oregon students of the Business Computer Training
7 Institute, Inc. ("BCTI"), alleging that BCTI made material misrepresentations that its
8 training programs would train students to become business professionals and prepare
9 them for high-paying jobs in high-tech computer careers; for officer administration
10 positions using computers; or for positions as web designers, network administrators,
11 hardware repair technicians and software help-desk specialists with the intent of inducing
12 Plaintiffs to enroll in the programs. Dkt. 1 at 10. Plaintiffs contend that BCTI conferred
13 certificates on students regardless of their academic performance and enrolled students in
14 order to acquire governmental funding. *Id.* at 11-12. According to Plaintiffs, BCTI did not
15 fulfill its representations with regard to career counseling, reasonable job placement
16 assistance, or referrals from BCTI. *Id.* at 13.

17 Plaintiffs allege the following claims on behalf of themselves and a class of
18 similarly situated individuals: (1) breach of contract and warranty, (2) violation of
19 Washington's Consumer Protection Act, RCW 19.86.020, (3) negligent infliction of
20 emotional distress, (4) negligence and lack of institutional control, (5) misrepresentation,
21 (6) breach of fiduciary duty, and (7) fraud.

22 Defendants move to dismiss Plaintiffs' claims against Defendants Tom Jonez,
23 Faye Jonez, Morrie Pigott, and Linda Pigott ("the moving Defendants"). Dkt. 10. The
24 moving Defendants contend that Plaintiffs fail to demonstrate the factual basis for
25 asserting liability against them. *Id.* at 2. In an attempt to address issues raised by the
26 motion, Plaintiffs move to amend their complaint. Dkt. 12. In the interest of judicial
27 economy, the Court has considered these motions concurrently.

II. MOTIONS TO DISMISS AND TO AMEND

Motions to dismiss may be based on either the lack of a cognizable legal theory or the absence of sufficient facts alleged under such a theory. *Balistreri v. Pacifica Police Department*, 901 F.2d 696, 699 (9th Cir. 1990). Material allegations are taken as admitted and the complaint is construed in the plaintiff's favor. *Keniston v. Roberts*, 717 F.2d 1295, 1301 (9th Cir. 1983). To survive a motion to dismiss, the complaint does not require detailed factual allegations but must provide the grounds for entitlement to relief and not merely a "formulaic recitation" of the elements of a cause of action. *Bell Atlantic Corp. v. Twombly*, 127 S. Ct. 1955, 1965 (2007). Plaintiffs must allege "enough facts to state a claim to relief that is plausible on its face." *Id.* at 1974. When deciding a motion to dismiss, the Court's consideration is limited to the pleadings. Fed. R. Civ. P. 12(d). In this case, the moving Defendants seek dismissal on the grounds that they cannot be held liable merely as shareholders or corporate officers. Dkt. 10.

Federal Rule of Civil Procedure 15 governs amendments of pleadings and provides in part as follows:

(a) Amendments Before Trial.

(1) Amending as a Matter of Course. A party may amend its pleading once as a matter of course:

(A) before being served with a responsive pleading; or

(B) within 20 days after serving the pleading if a responsive pleading is not allowed and the action is not yet on the trial calendar.

(2) Other Amendments. In all other cases, a party may amend its pleading only with the opposing party's written consent or the court's leave. The court should freely give leave when justice so requires.

Fed. R. Civ. P. 15(a).

The moving Defendants were shareholders of Business Computer Training Institute, Inc. and Business Computer Training Institute Community Services limited partnership. Dkt. 1 at 9. Morrie Piggot and Tom Jonez were the shareholders of Defendants Educational Management and Financing Corporation and Marketing Support Services Agency, Inc. *Id.*

1 The original complaint includes two allegations specifically referencing the
2 moving Defendants. First, Plaintiffs contend that Defendant Morrie Pigott acknowledged
3 that individuals were deemed to have a training-related position when such individuals
4 did not occupy such a position. Dkt. 1 at 12. Second, Plaintiffs contend that the actions of
5 the moving Defendants were such that they are personally liable for the actions of BCTI
6 and for any judgment against BCTI. *Id.* at 14.

7 In response to the Motion to Dismiss, Plaintiffs contend that the moving
8 Defendants were also responsible for BCTI's advertising and promotional efforts and for
9 closing BCTI schools and seek to impose liability against the moving Defendants for their
10 own actions and for the actions of the business entities. Dkt. 34 at 3. In other words,
11 Plaintiffs seek to pierce the corporate veil as to the moving Defendants. *Id.* Plaintiffs'
12 proposed amended complaint adds allegations that BCTI formed shell corporations, that
13 the moving Defendants comingled their personal assets with corporate assets, that the
14 moving Defendants altered the flow of assets in order to deceive the Department of
15 Education, that the moving Defendants instructed staff to convince former students to
16 seek multiple deferments of their student loans in order to avoid the Department of
17 Education's requirements regarding student default rates, that the moving Defendants
18 used corporate funds for personal use, and that the moving Defendants failed to adhere to
19 corporate formalities. Dkt. 13, Exh. A at 10-14. Finally, Plaintiffs contend that
20 Defendants Faye Jonez and Linda Pigott are liable for the community property debt of
21 their spouses. Dkt. 34 at 8-9.

22 Defendants oppose amendment of the complaint on the grounds that amendment
23 would be futile because Plaintiffs do not allege any facts against Linda Pigott and Faye
24 Jonez, because Plaintiffs fail to allege facts in support of their claims of individual
25 liability, because Plaintiffs are not shareholders and are therefore not owed a duty by
26 BCTI, and because Plaintiffs offer only conclusory statements to support piercing the
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1 corporate veil. Dkt. 17 at 5-8. For the reasons stated below, the Court declines to dismiss
2 Plaintiffs' complaint and grants Plaintiffs leave to file an amended complaint.

3 **A. LINDA PIGOTT AND FAYE JONEZ**

4 Defendants seek dismissal of all claims against Linda Pigott and Faye Jonez,
5 contending that these Defendants are named only because "they share the last names with
6 former officers and directors." Dkt. 17 at 6. Plaintiffs seek to impose liability on these
7 Defendants for the community property debts of their spouses. Dkt. 13 at 14. Defendants
8 fail to demonstrate that such an attempt is implausible on its face, and the Court therefore
9 declines to dismiss these Defendants.

10 **B. INDIVIDUAL LIABILITY**

11 The moving Defendants also seek dismissal of all claims against them on the
12 grounds that Plaintiffs fail to allege sufficient facts justifying liability. Dkt. 17 at 6-7.
13 Plaintiffs allege that the moving Defendants, as agents of BCTI, induced enrollment into
14 BCTI programs through the use of false statistics and advertisements that misrepresented
15 the quality of the program offered by BCTI. Dkt. 1 at 10-11. Taken as true, Plaintiffs'
16 factual allegations are sufficient to state a claim upon which relief may be granted.

17 **C. PIERCING THE CORPORATE VEIL**

18 As a threshold matter, the parties do not squarely address which body of law
19 governs this matter, and the Court therefore reserves ruling on this question. Defendants
20 contend that amendment of the complaint would be futile because Plaintiffs offer only
21 conclusory statements to support piercing the corporate veil. The Court concludes, for the
22 reasons below, that Plaintiffs' factual allegations are sufficient to justify piercing of the
23 corporate veil.

24 Washington courts will disregard the corporate entity and assess liability against
25 shareholders who intentionally use the corporation to avoid a duty owed to another.
26 *Morgan v. Burks*, 93 Wn.2d 580,585 (1980). The corporate entity may only be
27 disregarded if doing so is "necessary and required to prevent unjustified loss to the

1 injured party.” *Id.* at 587. Two elements are required to pierce the corporate veil: First,
 2 there must be evidence that the corporate form was intentionally used to violate or evade
 3 a duty. *Meisel v. M & N Modern Hydraulic Press Co.*, 97 Wn.2d 403, 410 (1982). This
 4 element is satisfied with evidence of fraud, misrepresentation, or some manipulation of
 5 the corporation to the benefit of stockholders and the detriment of creditors. *Id.* Second,
 6 disregard of the corporate form must be necessary to prevent an unjustified loss to the
 7 injured party. *Id.*

8 Under Oregon law, piercing the corporate veil is an extraordinary remedy to be
 9 utilized only as a last resort. *Hambleton Bros. Lumber Co. v. Balkin Enterprises, Inc.*, 397
 10 F.3d 1217, 1228 (9th Cir. 2005). Oregon law requires satisfaction of three elements: “(1)
 11 The shareholder must have controlled the corporation; (2) the shareholder must have
 12 engaged in improper conduct in his exercise of control over the corporation; and (3) the
 13 shareholder’s improper conduct must have caused plaintiff’s inability to obtain an
 14 adequate remedy from the corporation.” *Id.*

15 The proposed amended complaint alleges that the moving Defendants exercised
 16 complete control over the corporate Defendants, including their financial transactions;
 17 that the moving Defendants undercapitalized the corporate Defendants, resulting in the
 18 corporations’ inability to pay their debts; and that the moving Defendants failed to
 19 adhere to corporate formalities by using corporate funds for personal use and by failing to
 20 maintain corporate records. Dkt. 13 at 10-14. These allegations are sufficiently factual in
 21 nature and are not overly conclusory so as to render amendment futile or to justify
 22 dismissal of Plaintiffs’ complaint.

23 **D. PARTICULARITY OF FRAUD ALLEGATIONS**

24 Federal Rule of Civil Procedure 9(b) requires a complaint alleging fraud to state
 25 with particularity the circumstances amounting to fraud. Fed. R. Civ. P. 9(b). To satisfy
 26 this burden, the complaint must do more than merely recite the neutral facts necessary to
 27 identify the misrepresentation, such as its time, place, and content. *Yourish v. Cal.*
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1 *Amplifier*, 191 F.3d 983, 993 (9th Cir. 1999). Rather, the complaint must also explain
2 what is false about a statement and why it was false or misleading at the time it was
3 made. *Id.*

4 In this case, the moving Defendants contend that Plaintiffs' fraud allegations are
5 not stated with particularity as required by Federal Rule of Civil Procedure 9(b). Dkt. 37
6 at 2. Perhaps because Plaintiffs moved to file an amended complaint only after the
7 moving Defendants sought dismissal, the moving Defendants' reference to Rule 9(b)
8 appears for the first time in the reply. In the interest of fairness and due process, the Court
9 does not reach this issue at this time.

10 **III. CLASS CERTIFICATION**

11 Plaintiffs move to certify this matter as a class action. Dkt. 11. Because Plaintiffs
12 will be filing an amended complaint, the parties may wish to supplement their briefing on
13 the class certification issue to address any issues necessitated by the amendment. The
14 Court will therefore defer its ruling on the class certification motion until the parties have
15 filed their supplemental briefs, if any.

16 **IV. ORDER**

17 Therefore, it is hereby

18 **ORDERED** that Defendants' Motion to Dismiss for Failure to State Claims
19 against Non-Corporate Defendants Tom Jonez, Faye Jonez, Morrie Pigott, and Linda
20 Pigott (Dkt. 10) is **DENIED**; that Plaintiffs' Motion to Amend (Dkt. 12) is **GRANTED**,
21 and that Plaintiffs may file an amended complaint on or before May 14, 2008.

22 It is further **ORDERED** that the parties may supplement their briefing regarding
23 class certification as follows: Plaintiffs may file a supplement on or before May 14, 2008;
24 Defendants may file a supplemental response on or before May 26, 2008; and Plaintiffs
25 may file a supplemental reply on or before May 29, 2008. The supplemental motion and
26 response are limited to no more than six pages, and the supplemental reply is limited to no
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1 more than three pages. Plaintiffs' Motion for Class Certification (Dkt. 11) is **RENOTED**
2 for consideration on May 30, 2008.

3 DATED this 9th day of May, 2008.

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7 BENJAMIN H. SETTLE
8 United States District Judge
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